

Francis Bacon
84A Torriano Avenue
London
NW5 2SE

23 June 2011

Dear Mr Bacon

Freedom of Information Act 2000: Section 50(1)

Department for International Development

Please find enclosed a Decision Notice issued under section 50(1) of the Freedom of Information Act 2000. This Decision Notice relates to your complaint about a request for information that you submitted to the Department for International Development (the Department) on 1 September 2009.

Your complaint has been carefully considered and in this case the Commissioner has found partly in your favour.
The enclosed Decision Notice sets out the reasons for this decision.

If you disagree with any aspect of the attached Decision Notice, you have the right to appeal to the First-Tier Tribunal (Information Rights). Contact details for the First-Tier Tribunal (Information Rights) are included in the Decision Notice.

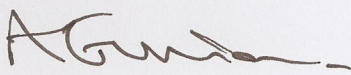
The Decision Notice includes details about you and the public authority. This is to ensure that there is no doubt as to the request for information to which the Notice relates. The Commissioner will publish the decision on the ICO website, but will remove all names and addresses of complainants.

Although public authorities may choose to reproduce this Decision Notice, the Commissioner would expect that they would take similar steps. The Commissioner considers that these may be necessary in order to comply with the requirements of the Data Protection Act.



I hope the above information is of assistance.

Yours sincerely

PP 

Terna Waya
Senior Case Officer
Complaints Resolution (Group 1)



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Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 June 2011

Public Authority: Department for International Development
Address: 1 Palace Street
London
SW1E 5HE

Complainant: Francis Bacon
Address: 84A Torriano Avenue
London
NW5 2SE

Summary

The complainant requested information relating to the performance reviews of overseas projects sponsored by the public authority. The public authority withheld the information within the scope of the request on the basis of all the exemptions at section 27(1) (international relations), the exemptions at sections 36(2)(b) (i) & (ii) (free and frank provision of advice and exchange of views) and 36(2)(c) (prejudice to effective conduct of public affairs), the exemptions at sections 38(1) (a) & (b) (health and safety), the exemptions at sections 40(2) (personal data) and 43(2) (commercial interests).

The Commissioner found part of the information was correctly withheld on the basis of sections 36(2)(b) (i) & (ii) and in all the circumstances of the case the public interest in maintaining the exemptions outweighed the public interest in disclosure. He also found that section 40(2) applied to some of the information. He however found that none of the other exemptions applied in relation to the remainder of the information and he has therefore ordered the relevant information to be disclosed.

The Commissioner also found the public authority in procedural breach of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 1 September 2009 the complainant wrote to the public authority requesting information held under the fields relating to project performance reviews on a database (referred to as 'ARIES'). The complainant's request was phrased as follows:
3. "For each record in the ARIES database, I would like to have a copy of all the information held under the fields relating to 'Project performance'. My previous enquiry indicates to me that the fields relating to 'Project performance' are:

Performance Review: Is an Annual Review Req, Ann Review Exempt Just., Annual Review Due Date, Annual Review Prompt Date, Annual Review Authorised, Summary Review Authorised, Is a PCR Required?, PCR Exempt Justification, PCR Due Date, PCR Prompt Date, PCR Deferral?, Deferral Justification, PCR Authorised

Output Scoring: Outputs, Impact Weight %, Output Performance, Impact Weighted Score, Risk

Project Scoring: Review Date, Total Impact Score, Output Risk, Project Purpose Score, Purpose Justification, Overall Risk score

Method of Scoring: Sources of Information

Scoring Responsibility: Partners Involved

Knowledge Sharing/Lessons: Date, Lesson Category, Notes

Conditionality Review: Disbursement Suspended, Cause, Date Suspended, Consequences

Notes: Notes

I would be grateful if you could also include, for each record, the Project number, description and budget centre so that they can be

identified.

Based on the answer to my previous enquiry I would expect to receive at least 3323 records. Please send these as a spreadsheet or database file."

4. On 28 October 2009 the public authority responded. The information within the scope of the request was withheld (hereinafter also referred to as 'the disputed information') on the basis of exemptions at sections 27(1) (a) (c) (d), 36(2) (b) (c), and 40(2).
5. On 2 November 2009 the complainant requested a review of the public authority's decision. He specifically requested that the public authority consider the points below.
6. In relation to the application of the exemptions at section 27(1), he asserted that it was highly questionable that the information requested would harm the UK's international relations, even if it might harm the public authority's. He then additionally requested advice under section 16 of the Act as to whether the request would be likely to succeed if restricted to projects which were no longer active.
7. In terms of section 36, the complainant also requested advice under section 16 as to whether the request would be likely to succeed if he omitted the fields relating to 'Knowledge Sharing/Lessons Learned'.
8. In terms of the application of section 40, he queried that the public authority had not made it clear which field(s) contained the relevant information but he explained that he would be willing to accept the omission of some of the fields if it would ensure that individuals would not be identified.
9. In relation to the public interest, he argued that disclosure would increase transparency in relation to how several hundred million pounds or more of tax payers' money is spent. He further argued that disclosure would reveal the types of aid projects which are successful and help others to learn from failures.
10. On 29 December 2009 the public authority wrote back with details of the outcome of the internal review it had conducted. The public authority maintained its reliance on the exemptions it had originally cited. In summary, the public authority explained that much of the material in the database (i.e. the disputed information) refers to governments and international organisations with whom the UK has ongoing relationships and therefore the review of a recently completed one year project would be as current as the first reviews on a live three or five year project. The public authority also stressed that disclosure would be likely to discourage both its staff and partners (who help

deliver many of its projects) from being candid in their assessments of projects to the detriment of project effectiveness and delivery.

11. The public authority did not however specifically address the issue of whether redacting the fields containing the candid comments made by its staff and partners would be sufficient to avoid the detrimental effect anticipated in that regard. With respect to the application of section 40, the public authority listed a number of fields (which it claimed was not an exhaustive list) as containing the names of individuals. It argued that disclosure would breach the legitimate expectation of their right to have their personal information protected.

The Investigation

Scope of the case

12. On 24 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He reiterated his view that disclosure would not harm the UK's international relations and that the names of individuals exempt under section 40(2) could be redacted. In addition, the complainant argued that there was a very considerable public interest in disclosure for the following reasons:
 - Disclosure would increase transparency of the way public money is spent and its effectiveness
 - The amount of taxpayers money in question is significant – several hundred million pounds or more
 - Disclosure would facilitate engagement by the public in debate over aid spending and participation in decision – making
 - Disclosure would enhance the quality of professional discussion and decision – making. It would assist in learning lessons. It would reveal the types of aid projects which are successful and help others to learn from failures. It would also help practitioners to harmonise aid flows
 - Disclosure would assist in increasing accountability in both the UK and in donor countries where the projects were based
 - One of DfID's Departmental Strategic Objectives is to improve the 'portfolio quality index' – a measure of the proportion of projects evaluated as successful. This measure is calculated from the performance data in the ARIES database

- The DfID is regularly questioned about the effectiveness of particular projects e.g. Committee for Public Accounts 'Aid to Malawi'
- DfID is involved in the International Transparency Initiative which aims to agree ways of sharing more and better information about aid
- DfID is signatory to the Paris Declaration on Aid effectiveness which commits it to 'enhancing donors and partner countries respective accountability to their citizens and parliaments for their development policies, strategies and performance'

Chronology

13. On 18 March 2010, before the complaint had been assigned to a case officer, the Commissioner wrote to the public authority and requested copies of the disputed information.
14. On 19 March 2010, a representative of the public authority informed a member of the Commissioner's staff that the disputed information was quite voluminous and therefore would be difficult to transfer to the Commissioner for the purpose of the investigation. The public authority was then advised to await further contact from the case officer who would be assigned the case.
15. On 10 August 2010 the Commissioner wrote to the complainant. He outlined the scope of the investigation and invited him to comment if necessary. The complainant did not question the scope of the investigation.
16. The Commissioner also wrote to the public authority on 10 August 2010. He specifically asked the public authority if it could provide a numerical estimate of the volume of data within the scope of the request held on the database. In the meantime he asked the public authority to provide him with samples of information which were broadly representative of the remainder of the information in the scope of the request. The Commissioner also asked the public authority to provide detailed representations justifying the use of the exemptions at sections 27(1) (a), (c) & (d), 36(2) (b) & (c), and 40(2).
17. On 13 September 2010 the public authority responded. In addition to the exemptions already relied on above, it claimed that the exemptions at sections 27(1)(b), 38(1)(a) & (b), and 43(2) applied.
18. The public authority's submissions on the application of exemptions and the Commissioner's clarifications have not been reproduced in this section of the notice and have instead been broadly reproduced in the analysis section below.

19. In terms of the volume of information that fell within the scope of the request, the public authority explained that the data set contained in the fields relevant to the request covered approximately 8000 projects and measured 30 megabytes. The public authority provided 40 samples of data held in one of seven screens relevant to the request and according to the public authority, the screen in question held a total of 6,700 records each containing 21 separate fields. It however stressed that this was a very small sample and some of the other screens held as much as 13,000 records.
20. On 23 September 2010, there was a telephone conversation between the case officer leading the investigation and a representative of the public authority. The representative confirmed that the records held on the database essentially covered the lifecycle and performance of each UK government sponsored project. The representative reiterated that it would be extremely time consuming to go through all the information in the database.
21. On 28 September 2010 the Commissioner wrote back to the public authority. He specifically requested that the public authority provide sample information from each of the fields within the database. The Commissioner stressed the importance of the sample information being broadly representative of the information requested and requested confirmation that this was the case.
22. On 12 October 2010 the public authority invited a representative of the Commissioner to visit its office and view the disputed information. The Commissioner responded on 13 October 2010 and advised that he would consider the option of viewing the disputed information in situ after the public authority had responded to his letter of 28 September 2010.
23. On 1 November 2010 the public authority responded substantively to the Commissioner's queries. The public authority provided additional sample information. As noted above, the submissions on the application of exemptions are broadly reproduced in the analysis section below.
24. On 9 February 2011 a representative of the Commissioner visited the public authority's London office with the intention of viewing the disputed information as suggested by the public authority.
25. The public authority however provided the Commissioner's representative with copies of all of the disputed information on a disk. No explanation was given as to why the public authority was subsequently able to provide all the disputed information on a disk.

26. On 2 March 2011 the Commissioner wrote to the public authority and requested submissions on the application of exemptions to the additional information provided.
27. On 1 April 2011 the public authority responded.

Analysis

Exemptions

28. The statutory provisions referred to below can be found in the legal annex.

Section 36(2) (b) and (c)

29. The Commissioner decided to first consider the application of sections 36(2) (b) and (c).
30. Specifically, information is exempt on the basis of section 36(2)(b) if in the reasonable opinion of a Qualified Person (QP), disclosure under the Act would or would be likely to (i) inhibit the free and frank provision of advice or (ii) the free and frank exchange of views for the purposes of deliberation.
31. According to the public authority, the opinion that the exemption was engaged was provided by then Secretary of State, Rt Hon. Douglas Alexander MP. The public authority could not however locate a copy of the opinion and consequently could not confirm when the opinion was given. It did however provide a copy of the submissions made by officials to the Secretary of State on basis of which he subsequently concluded that the exemption was engaged. The submissions were made to the Secretary of State on 20 October 2009.
32. Officials recommended that section 36 should be engaged for two reasons.
33. First, it was explained that some of the information consists of free and frank comments by the public authority's staff about the performance of overseas governments and disclosure could cause offence. Some information relating to project performance is already published on the public authority's website and disclosing the candid comments made by its staff would not be in the public interest. It was broadly submitted that free and frank exchanges on the effectiveness of its projects, programmes and business were absolutely essential to ensure that lessons learned are passed on so that results can be ultimately achieved at value for money for tax payers.

34. It would appear that officials specifically recommended that section 36(2)(c) should be engaged on the basis of the above explanations. The Commissioner however considers that the arguments advanced are more inherent in the exemption at section 36(2)(b) (i) and (ii) because the protection sought is primarily in respect of the free and frank provision of advice and exchange of ideas. The refusal notice cited both 36(2)(b) and (c).
35. Second, officials further explained that it was possible in principle to make partial disclosures by redacting sensitive comments about partner governments. However, it would be a time consuming process resulting in the disclosure of fragmented information which may result in additional enquiries from the public and the press, distracting staff from their normal duties and consequently impeding service delivery.
36. The public authority later explained to the Commissioner that the volume of information in the database meant that it had not been possible to undertake a full review of the information. It however submitted that undertaking such a review was an 'impossible burden on the Department' and there was no single person or group who could conduct such a review as the requisite knowledge and understanding was spread right across the Department. According to the public authority, because the disputed information had not been subject to management review or quality assurance, the potential harm in the event of disclosure was hugely significant.
37. The public authority was keen to stress that it is committed to ensuring that lessons from project reviews are accessible and available to others to promote development effectiveness as well as to ensure that it remains accountable. However, it was focusing its efforts on current and future plans for publication and could not devote the resources required to review historical information to ensure that it can be made publicly available without causing serious harm.
38. The Commissioner considers the above argument inherent in the exemption at section 36(2)(c) because it is primarily on the effect disclosure could have on the ability of the public authority to carry out its core activities effectively.

Likelihood of Prejudice

39. By virtue of the provisions of sections 36(2)(b) (i) & (ii) and 36(2)(c), the QP's opinion should indicate whether he/she considers that disclosure 'would or would be likely to' result in the harm envisaged by both exemptions. There is nothing explicit in the submission made by officials to the QP to suggest that they had recommended one or the other likelihood of prejudice. However, the Commissioner is satisfied

that the submissions did not imply the higher likelihood of prejudice (i.e. 'would prejudice') applied. The public authority was also quite clear in its internal review of 29 December 2009 that it considered the lower likelihood of prejudice (i.e. 'would be likely') applied and this was made clear in its representations to the Commissioner on 13 September 2010.

40. The Commissioner is therefore satisfied that the QP's opinion was based on the lower likelihood of prejudice. In the Commissioner's opinion, 'likely to prejudice' means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote.'

Disputed Information

41. For the reasons already noted above relating to the volume of information in the database, the public authority initially only provided the Commissioner with sample information from the database. The public authority provided samples of information under various fields in the database on 13 September 2010. The Commissioner subsequently asked the public authority to confirm that the fields and information therein contained in the sample information provided was broadly reflective of the information requested. The public authority provided additional sample information on 1 November 2010 but informed the Commissioner that the sample information provided to aid the investigation could only provide an extremely limited sense of the information held on the database and to that extent it was not substantially reflective of the information held. It was therefore in order to get a broad sense of the disputed information that the Commissioner's representative visited the public authority's London office in February 2010 to view the information. However, as noted in the chronology section above, the disputed information was subsequently provided to the Commissioner.
42. The Commissioner had previously requested clarification on the application of exemptions based on the sample information provided. Upon receiving the complete dataset, the Commissioner carefully reviewed all of the disputed information and wrote back to the public authority. He explained that given that the complete dataset could be reviewed, it would be reasonable for the public authority to break the disputed information down into categories and consider the application of exemptions in more detail rather than at a global level. The Commissioner reiterated the previous clarifications he had requested on the application of exemptions and invited the public authority to respond accordingly.

43. The public authority explained that even if the dataset was to be broken down into categories, it would still be an extremely onerous, if not impossible task to review and apply exemptions specifically to categories of information. The public authority reiterated the point which officials had previously made to the QP that there was no single person or team who could carry out the required level of scrutiny across all the projects and information in the database.
44. For the avoidance of doubt, the public authority confirmed that the disputed information consists of information in the following fields of the database:

Project Review

- a.** Project number,
- b.** Description,
- c.** Budget centre,
- d.** Budget centre description,
- e.** Review date,
- f.** Review type,
- g.** Total impact score,
- h.** Output risk,
- i.** Purpose score,
- j.** Risk score,
- k.** Total output score,
- l.** Disbursement suspended,
- m.** Cause,
- n.** Date suspended,
- o.** Consequences,
- p.** Purpose justification,
- q.** Output justification,
- r.** Purpose attribution,

s. Method of scoring,

t. Purpose ovi,

u. Line_no

v. Row-num'

PerfReview – header

a. Project

b. Description

c. Budcent

d. ann_revereq

e. rev_just

f. an_rev_date

g. an_rev_prompt

h. ann_rev

i. sum_rev

j. pcr req

k. pcr_just

l. pcr_due

m. pcr_prompt

n. pcr_deferral

o. def_just

p. pcr_authorised

PerfReview – Notes

a. Project

b. Description

c. Budcent

d. Notes

Reviews – Outputs

- a.** Project
- b.** Description
- c.** Budcent
- d.** Budcent_desc
- e.** Outputs
- f.** Weight_1
- g.** Output_perfscore
- h.** Impact_score
- i.** Risk
- j.** view_lineno
- k.** view_type

Reviews – Lessons

- a.** Project
- b.** Description
- c.** Budcent
- d.** Budcent_desc
- e.** Date_fx
- f.** Review_type
- g.** Lesson_category
- h.** Lesson_notes
- i.** Review_lineno

Reviews- Partners

- a.** Project
- b.** Review_lineno
- c.** Review_type

d. Partners_involved

Reviews-Method

a. Project

b. Review_lineno

c. Review_type

d. Description

45. In response to the clarifications requested by the Commissioner in relation to the sample information, the public authority had confirmed that the comments regarding project performance under the 'project review' section above are contained in the fields marked P, Q, and R.
46. However, having had the opportunity to review the rest of the disputed information, the Commissioner notes that in addition to the above fields, comments relating to project performance are also contained in the fields marked O (under 'PerfReview – header'), D (under 'PerfReview – Notes'), and H (under 'Reviews - Lessons').
47. Following his review of the sample information the Commissioner had initially suggested to the public authority that the information in the fields marked A – F (under project review) could be disclosed. The information relates to project numbers, description, budget centre, budget centre description, review date, and review type. The Commissioner explained that, in his opinion, the information appeared to lack sensitivity, did not contain comments or views and he could not accept there was a reasonable basis for an opinion that disclosing this specific information would be likely to result in the harm envisaged by the section 36 exemptions relied on or indeed any of the other exemptions relied on by the public authority.
48. Having had the opportunity to review the rest of the disputed information, the Commissioner requested additional clarification on the application of exemptions to the additional information provided. In the Commissioner's opinion, most of the remaining fields in the database also contain similar information which does not appear to be sensitive. The relevant information he identified is as described below.

Information in all of the fields under 'PerfReview – header' other than the field marked O above (i.e. def_just)

Information in all of the fields under 'PerfReview – Notes' other than the field marked D above (i.e. notes)

Information in all of the fields under 'Reviews – Outputs'

Information in all of the fields under 'Reviews – Lessons' other than the field marked H above (i.e. lesson notes)

Information in all of the fields under 'Reviews – Partners'

Information in all of the fields under 'Reviews – Method'

49. In responding to the query regarding the sample information, the public authority explained that although it had also considered disclosing the information in fields A - F, it considered that this would simply result in a very unhelpful and fragmented response entirely lacking in context. It however submitted that, it would, in any event be potentially harmful to disclose the information in fields A – F without proper scrutiny because it also includes details of extremely sensitive projects in States with fragile political structures. It argued that it is essential to protect information relating to these sensitive projects from the public domain to maintain good international relations. However, to identify the sensitive information would have required going through each project to distinguish the sensitive projects from the less sensitive ones, and in the public authority's view, it would not have been possible to undertake such a task because the necessary understanding of the sensitivities and potential for harm is spread across the Department.
50. In response to further queries by the Commissioner regarding the sensitivity of the remainder of the disputed information above, the public authority added that the cumulative effect which disclosure could have particularly on sensitive projects could have serious consequences for a wide range of parties, including individuals, and seriously undermine the UK's development work and poverty reduction activities where it is most needed. By way of example, the public authority explained that the disclosure of details of sensitive projects and their total impact score where the project is shown to have failed could have an adverse impact on its work.
51. In terms of the fields marked G – K (under project review), the Commissioner queried whether at the time of the request, the information relating to these fields was known to the host governments, donor countries and organisations as well as any other body or organisation involved in the implementation of the projects. The information relates to total impact score, output risk, purpose score, risk score, and total output score.
52. The Commissioner suggested that it is likely that the information in the relevant fields would have been less sensitive in relation to completed projects or those which had been suspended.

53. The public authority explained that the information in the fields marked G – K was not routinely shared with all interested parties or indeed with the wider public. Whether or not information is shared as suggested would depend on individual projects and the relationship with particular overseas governments and partners. The public authority did however concede that in some cases part of the information in the fields marked G – K above would have been known or accessible to stakeholders and interested parties. The public authority's view in terms of the effect of the disclosure of the scores obtained for specific assessments in relation to sensitive projects is already noted above.
54. In response to the Commissioner's suggestion that information relating to completed or suspended projects was likely to be less sensitive, the public authority explained that the passage of time had not led to a lessening of sensitivities because it was still very much engaged with the vast majority of the governments, organisations and partners involved in those projects. Therefore, disclosure without proper scrutiny would still be prejudicial to it.
55. In terms of the information in fields marked L – O (under project review) the Commissioner queried the public authority as to why the information was considered sensitive in view of the fact it would have been evident in most (if not all) cases that a project had been suspended. The Commissioner also asked the public authority to provide the number of projects which had been completed or suspended at the time of the request. The information relates to the suspension of disbursement and the fields are specifically entitled: disbursement suspended, cause, date suspended, and consequences.
56. According to the public authority, the information in the fields marked L – O is not necessarily shared with anyone other than the host government. It did however also concede that part of the information may be in the public domain but went to argue that if the fine details of the government's decisions to suspend development aid were made public, it could limit the government's ability to work with and influence overseas governments thereby undermining the UK's interests abroad. The public authority however explained that the issues to do with the volume of the dataset equally apply in relation to separating the sensitive and less sensitive information. For the same reasons, it could not also provide the number of completed projects.
57. For the same reasons as above, the public authority also withheld the information in the fields marked S and T. The information relates to fields entitled: method of scoring and 'purpose_ovl'.

58. According to the public authority, the fields marked U and V are internal database fields which permit linkage between different database tables and convey no meaning within the scope of the request. The Commissioner is satisfied with the public authority's explanation and he did not consider these fields as part of the investigation.

Was the Qualified Person's opinion reasonably arrived at and reasonable in substance?

59. As already noted, the exemptions at section 36(2) can only be engaged on the basis of the reasonable opinion of the QP. A QP includes any Minister of the Crown. The public authority was not able to locate a copy of the QP's opinion but did confirm that one was provided. In view of the fact that the opinion was sought in October 2009 within the period the request was made and also before the complaint was made to the Commissioner, the Commissioner is satisfied that the opinion was provided at the time of the request. He is also satisfied that Rt Hon. Douglas Alexander MP was the QP at the time of the request.
60. The Commissioner has already accepted that the opinion was provided on the basis of the lower, rather than the higher likelihood of prejudice.
61. In terms of the application of section 36(2)(b) (i) or (ii), the Commissioner is satisfied that the opinion was reasonably arrived at and was reasonable in substance. The primary consideration in terms of whether an opinion was reasonably arrived at was summed up by the Information Tribunal in *Guardian & Brooke v The Information Commissioner (Guardian & Brooke)* (EA/2006/011 & EA/2006/0013). Commenting rhetorically on the process by which the Act envisages an opinion should be formed, the Tribunal stated, 'can it really be said that the intention of Parliament was that an opinion reached, for example, by the toss of a coin, or on the basis of unreasoned prejudice, or without consideration of relevant matters, could qualify as "the reasonable opinion of a qualified person" under s36 merely because the conclusion happened to be objectively reasonable?' (Paragraph 63). In the Commissioner's opinion, this clearly suggests that at the very least, a QP should consider all the relevant circumstances before reaching an opinion and further that the opinion must be objectively reasonable.
62. The Commissioner notes that the QP's opinion regarding the application of the exemptions at section 36(2)(b) was primarily based on the nature of the comments made by the public authority's staff and partners in relation to the projects under review. The comments in question as has already been noted are contained in the fields marked

P, Q, R (under project review), O (under 'PerfReview - header'), D (under PerfReview - Notes), and H (under 'Reviews - Lessons').

63. In view of the matters considered by the QP as evidenced in the submissions from officials as well as the timing of the submissions, the Commissioner is satisfied that the opinion was reasonably arrived at.
64. In terms of the substance of the opinion, the Commissioner has also followed the Tribunal approach in the Guardian and Brooke case; that the opinion must be objectively reasonable.
65. The Commissioner has carefully reviewed the sample information provided by the public authority and he is satisfied that the comments in the fields marked D, H, O, P, Q, and R above constitute frank assessments of the performance of the projects under review. The Commissioner is therefore persuaded that the QP's opinion was an objective assessment of the potential consequences of disclosing the comments made in relation to the projects under review and for that reason the opinion was reasonable in substance.
66. In addition, given that the primary consideration relates to the inhibitory effect disclosure could have on the candid assessments of projects under review, it is highly likely therefore that the views expressed in relation to the performance of completed projects would be likely to make individuals less frank in their assessments of future projects. The Commissioner does not consider the timing of the comments crucial in this case. Rather, the crucial element in this case in his opinion is the perception that would have accompanied the disclosure rather than the age of the information.
67. The Commissioner therefore finds that the information in the fields marked D, H, O, P, Q, and R was correctly withheld on the basis of the exemption at section 36(2)(b) (i) or (ii) because disclosure would have been likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.
68. In terms of the remainder of the disputed information, the Commissioner finds that there is no reasonable basis to support the public authority's reliance on section 36(2)(b) (i) or (ii). He is not persuaded that the QP's opinion in relation to this part of the disputed information was reasonably arrived at and also reasonable in substance. The relevant information is described below.

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

69. Specifically, in relation to the suspension of aid, the Commissioner notes the relevant fields merely note whether or not the disbursement of funds for projects has been suspended. As far as he can see, the reason(s) for the suspension was not included in the relevant fields. The Commissioner finds that it is not a reasonable opinion that disclosure of this information would have had the prejudicial impact envisaged by section 36(2)(b) (i) or (ii).
70. Regarding the argument that disclosure would have resulted in the disclosure of fragmented information lacking in context, the Commissioner notes that the complainant requested information contained in identified fields of the database. It was therefore always entirely possible that he could have been provided with information relating to only some of the fields identified. Therefore, in the Commissioner's opinion, it was unreasonable to conclude that the disclosure of the information in the fields above would have been likely to prejudice the interests at sections 36(2)(b) (i) or (ii). The Commissioner cannot simply accept the exemptions were engaged in respect of all the disputed information when the public authority had itself admitted that part of the information is certainly not caught by the exemptions.
71. The Commissioner therefore finds that the exemptions at section 36(2)(b) (i) or (ii) were not engaged in respect of the information described above at paragraph 68.

Section 36(2)(c)

72. Having found that part of the disputed information was not exempt on the basis of the exemptions at sections 36(2)(b) (i) and (ii), the Commissioner next considered whether it was exempt on the basis of the section 36(2)(c). The relevant information under consideration is again reproduced below for ease of reference:

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

73. The thrust of the QP's opinion regarding the application of section 36(2)(c) was that the process of making partial disclosures from the database would have been too time consuming in view of the volume of information it would have needed to review and that it would have in any event resulted in fragmented disclosures which would have lacked any context
74. However, in subsequent submissions to the Commissioner, the public authority clearly indicated that it was impossible to undertake the task required in order to make the partial disclosures it had suggested in the first place.
75. In the Commissioner's opinion, section 36(2)(c) is not designed to protect a public authority from the effects of dealing with a request as opposed to the dealing with the effects of disclosure. The exemption is clearly worded along the lines which suggest that the QP's opinion should be on the likelihood of the relevant prejudicial effect occurring in the event of the disclosure of the information requested.
76. However, the QP's opinion in this case was based primarily on claims that due to the volume of information in the database, it would simply be too enormous a task to identify and separate the less sensitive information within the scope of the request. Therefore, the protection being sought in that regard was not in relation to any possible prejudicial effect of disclosure. Rather, the emphasis was on the alleged disruptive effect that complying with the request would have had on the public authority's core activities.
77. The second part of the public authority's argument is that complying with the request would have in any event resulted in fragmented disclosures lacking in context and the additional enquiries it would have then had to deal with would have distracted staff from their normal duties and consequently impede service delivery. The Commissioner has already addressed this point in his analysis on the application of

section 36(2)(b) (i) or (ii) above. To summarise, given that the complainant had requested information in identified fields, he had already implicitly recognised the possibility of receiving some (but not all) of the disputed information. In addition, disclosure accompanied by an explanation regarding the context in which the disclosed information should be considered would have shed more light on the nature of the disclosed information and considerably reduced the need to make further enquiries.

78. The Commissioner therefore finds that the exemption at section 36(2)(c) was not engaged because the QP's opinion at the time it was given was certainly not reasonably arrived at and to a large extent lacking in substance. It appeared at first that it was the likelihood of a fragmented disclosure which prevented the public authority from complying with the request but it was later suggested that partial disclosure would in any event be impossible due to the risk of disclosing sensitive information. Furthermore, emphasis was placed on the possible disruptive effect of complying with the request rather than the likely disruptive effect that complying with the request could have had on the public authority's core functions. In view of his finding, the Commissioner not gone on to conduct a public interest test in relation to this part of the disputed information.

Public Interest Test

79. The exemptions at section 36 are qualified so that if engaged, a public authority must also consider whether in all the circumstances of the case, the public interest in maintaining the relevant exemption outweighs the public interest in disclosure.
80. The Commissioner found that the exemptions at section 36(2)(b) (i) & (ii) were engaged in respect of information held in the fields marked D, H, O, P, Q, and R.

Public interest arguments in favour of disclosing the requested information

81. The public authority acknowledged the general public interest in openness, transparency, and accountability. Specifically, it recognised the public interest in the effectiveness and the efficiency of its overseas projects. It also recognised the public interest in being accountable for how public money is spent on these projects and that they are achieving the desired objectives. According to the public authority, all of its project reviews and evaluations are published and the first stage of its searchable project database went live in September 2009.
82. The public authority therefore argued that, set against the need to maintain the database as an important internal management tool

critical to effective programme management, the public interest in disclosure had been met by the information currently available and in view of the work underway to proactively publish more project data¹. The Commissioner notes that he can only take account of circumstances at the time of the request.

Public interest arguments in favour of maintaining the exemption

83. The public authority submitted that the effectiveness of the project reviews was heavily dependant on the willingness of all stakeholders to be open and frank in their contributions and assessments. It argued quite strongly that the disclosing the candid comments made by the contributors to the reviews is likely to discourage openness and lead to less effective reviews which would be detrimental to the successful delivery of the project objectives. There was therefore a very strong public interest in ensuring that officials and stakeholders remain as candid as possible with their views and disclosure was therefore not in the public interest.
84. The public authority further argued that there was a strong public interest in ensuring that its officials have space to develop their thinking and explore options when considering lessons learned from projects. There was also a public interest in protecting the internal reporting process and refining the project evaluation process to make sure it is effective as possible. If officials felt inhibited from being candid with one another because of the risk of subsequent disclosure, the quality of internal advice and discussion would diminish. This would in turn undermine the management and delivery of projects.

Balance of the public interest arguments

85. In addition to the public authority's submissions above, the Commissioner took into account all the public interest arguments advanced by the complainant in favour of disclosure.
86. The Commissioner especially agrees that disclosure would enhance the quality of any debates regarding the amount in aid that goes towards financing some of the projects. More generally, the Commissioner agrees with both the public authority and the complainant that disclosure would enhance the accountability of officials for public expenditure and further increase transparency in relation to how the projects are managed. There is, in the Commissioner's view, no doubt a significant public interest in knowing how the funds for these projects are managed and administered. The information would add further

¹ <http://projects.dfid.gov.uk/> and <http://iatiregistry.org/group>

detail to information already in the public domain and aid understanding of the position of the projects.

87. The Commissioner however also recognises the significant public interest in protecting the ability of officials and stakeholders to express their candid opinions and offer frank advice or recommendations in relation to the running and management of projects. The Commissioner agrees with the public authority that there is a strong public interest in ensuring that project performance reviews do not produce outcomes which do not reflect the candid views of officials and stakeholders. Such outcomes would not ensure that the public is receiving value for money and is therefore not in the public interest.
88. In summary, the Commissioner is persuaded that there is a very strong public interest in ensuring that the performance of overseas projects which have received the UK government's support (financially and otherwise) is thoroughly scrutinised by officials without fear that their comments could be disclosed. The Commissioner notes that civil servants are highly professional and are therefore unlikely to let the prospect of disclosure affect their conduct or inhibit their comments when carrying out their roles. However, he considers that because their comments in the circumstances of this case could potentially embarrass foreign governments, disclosure would more than likely make them more circumspect in expressing their views about the performance of a project. This would be to the detriment of those likely to benefit from the projects as well as the UK taxpayer as it is vitally important that those assessing the projects are able to freely express their views on whether or not they are achieving their objectives.
89. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemptions outweighed the public interest in disclosure.

Section 27

90. The Commissioner next considered whether the disputed information which he found not exempt under sections 36(2) (b) & (c) was correctly withheld on the basis of the exemptions at section 27. The relevant disputed information is again described below for ease of reference.

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

91. As noted above the public authority relied on all the exemptions under section 27 (i.e. section 27(1) (a), (b), (c), & (d)). Information is exempt under section 27 if its disclosure under the Act would or would be likely to prejudice;
 - a. relations between the UK and any other State,
 - b. relations between the UK and any international organisation or international court,
 - c. the interests of the UK abroad, or
 - d. the promotion or protection by the UK of its interests abroad.
92. In summary, the public authority argued that its overseas work depends heavily on maintaining good relationships with international partners. According to the public authority, some of the information relating to the request is very sensitive because it contains candid and in some cases critical remarks about the actions and governance of other States and international organisations. Disclosure could therefore cause offence and lead to a loss of trust and confidence in the UK government. It could also prejudice the public authority's ability to work with and influence other donors thereby undermining the government's ability to respond to international development needs. It could also affect the government's ability to promote UK interests not only with individual states but also within international organisations such as the G8, United Nations, and the World Bank. The public authority argued that maintaining the confidence and trust of the international community was vital when forging alliances to promote and carry out the government's foreign policy.
93. The Commissioner notes that the thrust of the public authority's arguments above mirror the arguments it relied on under section 36(2)(b) (i) & (ii) in relation to the views and comments of officials and stakeholders regarding the performance of projects. The Commissioner has already found that information was correctly exempt. The public authority did not direct further arguments, in any detail, to the other fields and data in the dataset.
94. The Commissioner therefore finds that the exemptions at section 27 were not engaged.

Section 43(2)

95. The Commissioner next considered whether the disputed information which he found not exempt on the basis of sections 36(2) (b) & (c) and 27 was correctly withheld on the basis of the exemption at section 43(2). The relevant disputed information is again described below for ease of reference.

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

96. Information is exempt on the basis of section 43(2) if its disclosure under the Act would or would be likely to prejudice the commercial interests of any person including the public authority holding it.
97. The public authority argued that if for example it was disclosed that an organisation had been criticised for underperforming following a project performance review, it could damage their reputation and the confidence that other donors, suppliers or partners may have in them. This would be likely to prejudice their commercial interests. For the avoidance of doubt, nothing in this Notice should be construed as evidence that the withheld information includes unfavourable comments against any organisation(s) involved in a project(s).
98. The public authority also argued that disclosing information relating to project reports and management could influence proposals to tender exercises for future similar work. This could lead to the public authority incurring greater expense in running its projects consequently undermining its ability to fulfil its role and achieve value for money. This would be likely to prejudice the public authority's commercial interests.
99. In terms of the disclosure of critical comments (if any) about an underperforming organisation, the Commissioner has covered this point under the exemption at section 36(2)(b) (i) or (ii) in relation to information in the fields marked P, Q and R.

100. The public authority did not specify the information it considers could prejudice its commercial interests in the event of disclosure. It is unclear from the withheld information itself which information it was referring to on the database in relation to project reports and management. The Commissioner therefore finds that the exemption at section 43(2) was not engaged.

Sections 38(1) (a) and (b)

101. The Commissioner next considered whether the disputed information which he found not exempt on the basis of sections 36(2) (b) & (c), 27, and 43(2) was correctly withheld on the basis of the exemptions at sections 38(1) (a) and (b) . The relevant disputed information is again described below for ease of reference.

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

102. Information is exempt on the basis of the above exemptions if its disclosure under the Act would or would be likely to endanger the physical or mental health of any individual or endanger the safety of any individual.
103. According to the public authority, it undertakes projects in places which routinely experience difficult security situations like Afghanistan, Somalia, and Sudan. The public authority explained that disclosing information surrounding the precise geographical areas of its operators or the equipment used by its staff and individuals it worked with could seriously compromise the security of those individuals.
104. The public authority did not specify the projects (or indeed the number of projects) or any real examples of projects where it considers the safety of individuals would be likely to be put at risk if information regarding those projects was to be made publicly available. It would seem entirely plausible in the Commissioner's opinion to expect such projects to be identifiable given their alleged sensitivity. In any event, the public authority did not provide any specific evidence to support

the inference that the existence of these projects might not be known in the host countries or why identifying the equipment used by the individuals could jeopardise their safety. The Commissioner should clearly consider these arguments carefully given the alleged sensitivity but cannot accept there is any basis to withhold entire fields of data under this exemption and no specific examples have been supplied.

105. On the evidence of the public authority in support of the application of the exemptions, the Commissioner finds that they were not engaged in respect of the disputed information described above.

Section 40 (2)

106. The Commissioner next considered whether the disputed information which he found not exempt on the basis of sections 36(2) (b) & (c), 27, 43(2) and 38(1) (a) & (b) was correctly withheld on the basis of the exemptions at section 40(2). The relevant disputed information is again described below for ease of reference.

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

107. Information is exempt on the basis of section 40(2):

- If it constitutes the personal data of which the applicant (i.e. the individual requesting information under the Act) is not the data subject (commonly referred to as third party personal data), and
- Either the first or second condition in sections 40 (3) and (4) is satisfied.

108. The first condition partly stipulates that the disclosure of third party personal data to a member of the public would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

Does the information in the fields described above contain information which constitutes third party personal data?

109. Section 1(1) of the DPA defines personal data as;

'data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

110. The Commissioner notes that the field marked S ('method of scoring') contains references to specific individuals and groups who had scored the performance of the projects under review and the criteria they had adopted. Other than that specific field, the Commissioner could not find any information in the fields described above specifically relating to individuals and/or groups of individuals. Furthermore, the public authority did not specify the information it considered is caught by the section 40(2) exemption.

111. The Commissioner finds that information relating to individuals in the field marked S is personal data within the meaning of section 1 of the DPA. He finds that the rest of the information in the fields described does not contain personal data within the meaning of section 1 of the DPA.

Would the disclosure of information constituting personal data in the field marked S contravene any of the data protection principles?

113. The first data protection principle states that personal data shall be processed fairly and lawfully and in particular shall not be processed unless one of the conditions in schedule 2 is met and schedule 3 in the case of sensitive personal data. Sensitive personal data is defined in section 2 of the DPA. The Commissioner is satisfied that the field marked S does not contain sensitive personal data within the meaning in section 2 of the DPA.

114. The Commissioner therefore first considered whether the disclosure of the personal data in field marked S would have been unfair to the data subjects (i.e. the individuals to whom the data relates). In considering the fairness element of the first data protection principle, the Commissioner took into account the reasonable expectations of the data subjects and the circumstances in which the personal data was provided.

115. The Commissioner notes that in some cases, it is quite clear that the scores and scoring criteria were shared by the individuals who

assessed the projects with the host countries, stakeholders, and the public authority's partners. The Commissioner does also accept that they were carrying out a public function, as opposed to a private function. But the Commissioner accepts that their involvement with the projects is not in the public domain. In the circumstances the Commissioner accepts that the individuals involved had a reasonable expectation that their role in scoring the projects would not be disclosed to the public.

116. The Commissioner finds that disclosure would have been unfair to the data subjects. Disclosing their involvement with the project could expose them to unfair levels of scrutiny and attention, when they would not have been the decision makers for the projects. While the Commissioner accepts there is a legitimate public interest in understanding the project review process this interest can be met without disclosing the personal data. The public interest can be met in a more proportionate way, not disclosing personal data likely to cause distress.
117. The Commissioner therefore finds that the exemption at section 40(2) was not engaged in relation to the names of individuals in the field marked S ('method of scoring').

Procedural Requirements

118. Section 10(1) provides that a public authority must respond to a request for information within 20 working days
119. Section 17(1) of the Act provides that a public authority denying an applicant access to requested information on the basis of any of the exemptions in the Act must issue the applicant with a refusal notice within 20 working days.
120. The Commissioner finds the public authority in breach of sections 10(1) and 17(1) for the late response to the request and also for issuing the complainant with a refusal notice outside of the statutory 20 working days.
121. Section 17(1)(b) of the Act provides that a public authority's refusal notice should specify all of the exemptions it is relying on to withhold the requested information.
122. The Commissioner finds the public authority in breach of section 17(1)(b) for the late reliance on the exemptions at sections 27(1)(b), 38(1) (a) & (b), and 43(2).

The Decision

123. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- i. The public authority correctly relied on the exemptions at sections 36(2)(b) (i) and (ii) to withhold the information in the fields marked D (under 'PerfReview – Notes'), H (under 'Reviews – Lessons'), O (under 'PerfReview – header'), and P, Q, R (under 'Project Review').

124. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- ii. The public authority incorrectly relied on the exemptions at sections 27(1) (a), (b), (c), & (d), 36(2)(b) (i) & (ii), 36(2)(c), 38(1) (a) & (b), 40(2), and 43(2) to withhold the information described below.

Project Review: fields marked A – O, S and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A – D

Reviews – Method: fields marked A – D

- iii. The public authority correctly withheld the names of individuals in the field marked S ('Method of Scoring') on the basis of the exemption at section 40(2).
- iv. The Commissioner consequently finds the public authority in breach of sections 1(1)(b) and 10(1) of the Act for not making the information described above available to the complainant within 20 working days of the request.
- v. The Commissioner also finds the public authority in breach of sections 10(1) and 17(1) for the late response to the request and for issuing the complainant with a refusal notice outside of the statutory 20 working days.

- vi. The Commissioner additionally finds the public authority in breach of section 17(1)(b) for the late reliance on the exemptions at sections 27(1)(b), 38(1) (a) & (b), and 43(2).

Steps Required

125. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclose all of the information in the fields described below.

Project Review: fields marked A – O, and T

PerfReview – Header: fields marked A – N and P

PerfReview – Notes: fields marked A – C

Reviews – Outputs: fields marked A – K

Reviews – Lessons: fields marked A – G and I

Reviews – Partners: fields marked A - D

Reviews – Method: fields marked A - D

126. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

127. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

128. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
129. Part VI of the section 45 Code of Practice (the "section 45 code") makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a

prompt determination of the complainant. As he has made clear in his *'Good Practice Guidance No 5'* published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that, despite the publication of his guidance on this matter, it took the public authority just under 40 working days to complete its internal review in this case.

Right of Appeal

130. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

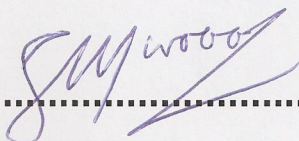
Website: www.informationtribunal.gov.uk

131. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

132. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 23rd day of June 2011

Signed



Steve Wood
Head of Policy Delivery
Information Commissioner's Office
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Water Lane
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SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Time for Compliance

Section 10(1) provides that -

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

International Relations

Section 27(1) provides that -

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (d) relations between the United Kingdom and any other State,
- (e) relations between the United Kingdom and any international organisation or international court,
- (f) the interests of the United Kingdom abroad, or
- (g) the promotion or protection by the United Kingdom of its interests abroad."

Prejudice to effective conduct of public affairs.

Section 36(1) provides that –

"This section applies to-

- (h) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (i) information which is held by any other public authority.

Section 36(2) provides that –

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (j) would, or would be likely to, prejudice-
 - 1. the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - 2. the work of the Executive Committee of the Northern Ireland Assembly, or
 - 3. the work of the executive committee of the National Assembly for Wales,
- (k) would, or would be likely to, inhibit-
 - 1. the free and frank provision of advice, or
 - 2. the free and frank exchange of views for the purposes of deliberation, or
- (l) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Health and safety.

Section 38(1) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to-

- (m) endanger the physical or mental health of any individual, or
- (n) endanger the safety of any individual."

Personal information.

Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (o) it constitutes personal data which do not fall within subsection (1), and
- (p) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (q) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - 3. any of the data protection principles, or
 - 4. section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (r) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Commercial interests.

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”